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Art Unit: 2167

Applicants: Gupta et al.

Office: Lu, Kuen S.

Title: DATABASE MIGRATION

Docket No.: CHA920010011US1
(IBMC-0022)Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Notice of Appeal has been filed together with this Request. Please charge Deposit Account No. 09 - 0469 for any required fees for filing this Request.

Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a *prima facie* case of obviousness because of errors in facts and in law. Claims 1-2, 5-16, 18-32, 34-43 and 45-50 are pending in this application.

In the Final Office Action, claims 1-2, 5-16, 18-32, 34-43 and 45-50 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Replication Server Design Guide*, Sybase Inc., May 29, 1998, hereinafter "RepSvr," in view of Schwaller et al. (US Pat. No. 6,061,725), hereinafter "Schwaller." Applicants submit that this rejection is clearly not proper and without basis for the reasons stated below.

09/973,810

Page 1 of 5

First, Applicants submit that in the Final Office Action, the Office asserts several times that teachings of RepSvr are “equivalent” to the features of the claimed invention, but does not provide any reason to support the assertions. *See e.g.*, Office Action at page 3, last paragraph to page 4, second full paragraph. For example, the Office asserts that “RepSvr’s updating a record in the new active database for verifying its update on the new standby database after the switch over is equivalent to [Applicants’] executing the at least one queued transaction request on the second server.” *See* Office Action at page 4, second full paragraph. Applicants submit it is unreasonable to assert that updating a record is “equivalent” to executing the at least one queued transaction request. Similarly, it is unreasonable to assert that updating a record is “equivalent” to providing transaction service on the second server. *See Id.* The Office does not provide any support for the “equivalent” assertions. Accordingly, Applicants submit that the above-described features are missing from RepSvr. In addition, the Office asserts that the stable queue of RepSvr suggests the teaching of queuing at least one transaction request of the claimed invention. Office Action, page 4. However, the stable queue of RepSvr is not queuing a transaction request because in RepSvr the messages that are saved in the stable queues have already been sent to their destinations. *See* RepSvr at page 1-9, lines 14-16. That is, in RepSvr, a transaction request is not queued. Accordingly, the prior art fails to teach or suggest queuing at least one transaction request, as recited in the claimed invention.

Second, Applicants submit that many of the Office’s assertions are not supported by the citations provided. For example, the Office asserts that “RepSvr’s replication server allocates stable queues ... during the active database being switched over to the standby,” citing pages 1-9, 3-20 and 3-21 of RepSvr. Office Action, page 4. However, the cited pages of RepSvr do not mention anything regarding stable queue during switchover. Accordingly, RepSvr does not

disclose or suggest queuing at least one transaction request, as recited in the claimed invention. In addition, the Office asserts that "RepSvr's replication server receives primary data transactions, distributes and reconstructs the transactions to the replicating sites, ... until the primary database is switched over to the standby database[,]" citing RepSvr at pages 1-8, 1-10 and 3-20. Office Action at pages 3-4, emphasis added. However, the cited pages of RepSvr do not mention anything regarding distributing transactions to the replicating sites until switch over is completed. Accordingly, RepSvr does not disclose or suggest the recited repeating step. Further, the Office asserts that RepSvr's active database discloses the second server of the claimed invention. See Office Action at pages 4-5. However, the Office also asserts the same active database of RepSvr is the first server of the claimed invention. See Office Action at page 3, line 3. This is clearly an error in facts because the first and the second servers are two different features of the claimed invention. By using the same active database of RepSvr to disclose both of the claimed features, the Office actually ignores at least one of the two claimed features.

Third, Applicants submit that the suggested combination of the prior art does not disclose or suggest "a time duration of each repeating step (i.e., logging at least one transaction and executing the at least one logged transaction) is shorter than a preceding repeating step [.]'" (Claim 1). (Parenthetical explanation added). Admitting that RepSvr does not teach or suggest this feature (Office Action at page 4), the Office asserts that Schwaller addresses this deficiency of RepSvr. (Office Action at page 5). However, Schwaller does not disclose or suggest this feature because Schwaller just discloses increasing or decreasing a measurement period in a test scenario. A measurement period in Schwaller is for a test scenario for a communications network, which is not the same as a repeating step of logging at least one transaction and

executing the at least one logged transaction in the claimed invention. Accordingly, it is illogical to assert that Schwaller discloses or suggests a repeating step with a shorter time duration.

Fourth, Applicants submit that the Office misstates facts in asserting a suggestion or motivation to combine Schwaller and RepSvr. The Office asserts that there is motivation or suggestion to combine “because both references teach database update on network[.]” Office Action at page 5. However, Schwaller is not concerned with a database update on a network. Rather, Schwaller is exclusively concerned with testing a performance of a communications network, and whether to vary a script to decrease or increase the size and frequency of transactions to simulate communications traffic situations. This functioning is out of the question for RepSvr. RepSvr cannot manipulate the size and frequency of transactions if it is going to achieve the replication of data. In view of the foregoing, an adoption of the Schwaller teachings regarding manipulating a test scenario, i.e., changing size and frequency of measurement periods, for RepSvr is illogical. Therefore, there is no suggestion or motivation to combine RepSvr and Schwaller. Accordingly, the Office has failed to establish a *prima facie* case of obviousness.

In view of the foregoing, Applicants submit that the Office has failed to state a *prima facie* case of obviousness, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,



Date:

12/13/05

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